IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 735 of 2004
in
Summons for Judgement no. 595 of 2002
in
Sum Suit No. 4383 of 200l

Sar Enterprises and or.. appellants
vs
Vijay N Mehta ...respondent

Mr.Biren Saraf i/b Kiran Jain & Co for appellants
Mr. R.C.Shah for respondents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l2.l.2005

P.C:

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Heard the learned counsel for the parties.

l. Appeal is admitted. Respondent waive service. By consent appeal is taken up for final hearing.

2. This appeal is directed against the order of the learned single Judge passed in a summary suit granting conditional leave to defend the suit on deposit of Rs.4 lacs. The suit is filed on the basis of four documents i.e three promissory notes and one writing in Gujarati. The writing in Gujarati is supposed to be a writing dated l.ll.l998 in the sum of Rs.2.50 lacs and the other three are promissory notes for Rs 2 lacs each

executed on the same day. The defence is that the defendant has borrowed Rs.2.50 lacs and three promissory notes for Rs.2 lacs each on which the plaintiffs have placed reliance was actually blank promissory notes executed on blank paper by way of collateral security in favour of the plaintiffs. It is also the case of the defendant that the rate of interest agreed was l2% and not l8% per annum as claimed by the plaintiff. It is further case of the defendant that the amount of Rs.2.50 lacs was returned with interest, however, there is no prima facie evidence to show that the amount was repaid. The learned judge has directed deposit of Rs. 4 lacs in view of the admission of the defendant that he has borrowed Rs.2.50 lacs with interest at the rate of l2% p.a. If the interest is charged on Rs.2.50 lacs total amount comes to Rs.3.40 lacs. We therefore reduce the amount of deposit from Rs.4 lacs to Rs.3.40 lacs. Subject to this modification the order of the learned single Judge is confirmed. Time to deposit the money is extended by 8 weeks from today.

Appeal stands disposed of.